

GARRISON ASKS ACQUITTAL; JURY RETIRES FOR EVENING

Deliberation to Resume This Morning

By JOHN McMILLAN
and DON HUGHES

The jury in the trial of Dist. Atty. Jim Garrison slept Tuesday night on a final statement by the DA "praying" for an acquittal followed by U.S. Atty. Gerald J. Gallinhouse's plea that "the people cry for justice" and a charge by Judge Herbert W. Christenberry that took more than two hours.

The 12 jurors got the case at 6:30 p.m., deliberated for only 20 minutes and left the federal courts building for supper, then retired to a nearby hotel for the night to consider privately the more than five weeks of trial testimony. Deliberations will resume at 9:30 a.m. Wednesday.

Tuesday morning, Garrison delivered an impassioned two-hour-and-50-minute statement trying to convince the jury the federal government had created a bribery conspiracy where none had existed.

At one point, the DA seemingly fought back tears as he told of how his children may have doubted his innocence over the past two years since his arrest.

His voice cracked as he delivered his final message to the three women and nine men who make up the jury. It was a quote from Robert Browning's poem, "The Lost Leader."

But Gallinhouse had the last say and he used it dramatically.

"Law enforcement and justice are not for sale. When a public official like Mr. Garrison breaks the law it breeds contempt for

justice. It is sad but true that he betrayed a public trust."

And then the U.S. Attorney said, "No man, no matter how big, or how big he thinks he is, is above the law. The people cry for justice and it is up to you, ladies and gentlemen of the jury, to give it to them."

Garrison and his co-defendants — pinball executive Robert E. Nims and John Aruns Calery, who were accused of conspiring to obstruct the enforcement of state laws against illegal pinball gambling by bribery — face a maximum penalty of five years imprisonment and a \$20,000 fine if convicted.

To reach a verdict in a federal criminal case the decision must be unanimous. Any split among the 12 persons on the jury results in a hung jury. The case could then be retried.

The jury began its deliberations following U.S. Dist. Judge Herbert W. Christenberry's charge to them regarding the law governing conspiracy.

He explained the conspiracy law and told them how to apply it regarding the evidence in the case.

The case against Garrison and his fellow defendants began with an investigation by Internal Revenue Service intelligence agents and eventually the Organized Crime Strike Force in New Orleans. It resulted in the arrest of Garrison and nine others on June 30, 1971.

Besides the defendants, those arrested were former New Orleans Police Department Capt. Frederick Soule Sr., former police vice squad commander Sgt. Robert Frey, and pinball executives John Elmo Pierce, Louis Boasberg, Harby Marks, John Elms Jr. and Lawrence Lagarde Sr.

All except those on trial have either pleaded guilty or have been severed.

The case against the defendants was made with the cooperation of the controversial and colorful Pershing O. Gervais, the most dramatic witness in

the case and a former chief investigator for Garrison.

And in his closing statement Garrison hammered away at his one-time friend.

But Gallinhouse countered Garrison's charges that Gervais was a corrupt liar by saying that on the day before he was arrested the DA called Gervais to get his approval to hire a new executive assistant DA because Gervais was Garrison's "best friend."

Gallinhouse told the jury Garrison obviously didn't approve of the Omnibus Crime Bill under which he was charged.

"It is understandable that Mr. Garrison would be upset that the U.S. Congress passed a law making it illegal for Mr. Garrison to accept bribes to protect the illegal pinball gambling business," the prosecutor said.

For without that law, Gallinhouse said, "they would still be operating their illegal business and paying bribes."

If that law had not been enforced by the IRS agents and the Department of Justice, the DA "would not have enforced state law against himself or his co-conspirators, nor would his assistants have prosecuted him," Gallinhouse said.

"Does Mr. Garrison think he should be above the law?" Gallinhouse asked. He then said, "Thomas Jefferson certainly didn't mean to endorse this type of action that has occurred in this case."

He was referring to the DA quoting from the Declaration of Independence in his closing statement.

Then Gallinhouse used a quote of his own, which he pointed out is chiseled on the Orleans Parish Criminal District Court building where Garrison has his office: "The Impartial Administration of Justice Is the Foundation of Liberty."

"All people are equal in the eyes of the law," Gallinhouse said. "There are no big people and no little people."

But, he said, Garrison has not lived up to that idea because he

failed to enforce the "laws for the common good of all our citizens."

The U.S. attorney said, "The national government had the right and we had the duty to investigate the bribe givers and the bribe takers."

Gallinhouse cited Garrison's long association with Gervais in which he said Gervais delivered \$147,825 in pinball bribe money to the DA, and exhibited a plaque Garrison gave to him after he left the DA's office.

It was inscribed "to the best chief investigator the DA's office ever had," and was signed by Garrison and his staff.

Gallinhouse said if Garrison had been successful in getting Gervais to take his side when he returned to New Orleans from his hideout in Canada after the DA's arrest, Garrison would not have attacked Gervais so "viciously."

But instead of working with Garrison, Gallinhouse said, Gervais "decided to do the right thing when he crossed over from the shadowy side of the street to the sunny side, the law enforcement side of the street."

He also struck out at Garrison's explanation to the jury of why he had not enforced the law against the owners of the pinball machines, saying, "The reasons of Garrison for not enforcing the laws are not real reasons but feeble excuses."

Garrison had tried to prove that he did not have the law enforcement tools but Gallinhouse saw it differently. And, he said, Garrison's only efforts—"and here is the cutting unfairness—the little people, the bar maids, the small store owners were prosecuted but not the owners of pinball machines" who were paying him bribe money.

In outlining the alleged conspiracy, Gallinhouse called it "an unholy alliance."

He said, "There is no defense and there can be no defense for such brazen, callous, and cynical venality."

Discussing the tape recorded conversation of Garrison alleg-

edly taking the bribe payments from Gervais, Gallinghouse said one discussion of the payments "dropping down" following federal raids on pinball machines in November of 1970 is "proof positive" that the government's contention that the bribery conspiracy began when Garrison took office in 1962 is true.

And as far as the authenticity of the tape recordings, Gallinghouse said Garrison himself said he did not attack the integrity of the IRS agents who worked on the case—Floyd D. Moore, Arlie G. Puckett, Irving Johnson, Edward Martin, Joel Lanoux, Bruce Miller and others.

If he did not attack their integrity, Gallinghouse asked, how could he attack the integrity of the tapes which they had monitored and recorded and kept in their possession.

Gallinghouse began his one-hour and 50-minute statement by attacking the defense of defendants Callery and Nims.

He said that Virgil Wheeler—who represents Callery—admitted in effect that Callery was a member of the alleged conspiracy which began in 1962 but was not a part of the conspiracy after Oct. 15, 1970, the date the law under which they are being tried went into effect.

Louis LaCour argued that his client was out of the conspiracy at that time also.

"The evidence in the record does not support this," Gallinghouse said, adding:

"The evidence shows that there was a single conspiracy to aid and facilitate this illegal pinball gambling business. This conspiracy extended through Oct. 15, 1970, and until June 30, 1971, when they were arrested."

Nevertheless, Gallinghouse said it is not necessary to prove that the defendants were part of a conspiracy for the entire time it was in effect, just a part of the time.

Gallinghouse said there was a single experience and the "ball game" lasted "nine full innings, or more properly, nine years."

He said Callery "threw out the first pitch," when he made a \$10,000 campaign contribution to Garrison in 1962 in the name of the pinball owners.

The only "time out" in the game, he said, was in December, 1970 when no payments were made as a result of the federal raids which partially shut down the gambling business.

But then it continued "until the umpires—the federal law officers—called a halt to this illegal ball game" June 30, 1971.

He cited acts by Callery and Nims which he said placed them in the "game" far past the Oct. 15 date which they attempted to use as a cutting off point for their participation.

He said, "We're going to ask you, ladies and gentlemen, to find Mr. Callery and Mr. Nims guilty because they are guilty beyond any reasonable doubt."

In his lengthy final argument, during which he frequently mopped his brow with a white handkerchief, Garrison contended that government informant Pershing T. Gervais was the "prime mover" behind the government's case against him and the other defendants, and questioned whether any conspiracy charge could ever have existed without Gervais, his one-time chief investigator.

The DA termed Gervais "a man very close to genius when it comes to manipulation" of people, adding Gervais was the one who got all of the others arrested in the case together.

"I suggest to you the answer is there probably would not have been" a conspiracy, Garrison continued, referring to Gervais as "the person without whom nothing would have happened."

Throughout his concluding statement, Garrison hammered most heavily on the credibility of the 53-year-old Gervais, the integrity of the government's tape recordings

made with Gervais' cooperation and the testimony of Soule.

Toward the conclusion of his statement, Garrison became obviously emotional and had difficulty holding back the tears as he told the jury that over the past two years since his arrest "I have had to bear the knowledge that my children must have had some doubts."

He said he believes the law can be enforced without trickery and deceit and violation on the part of law enforcement agencies themselves, adding that the ones who can best protect against the bureaucracy of government are the citizens themselves.

He asked the jurors to "hold fast to the dictates of your consciences," and pleaded with

them to make no errors or mistakes in reaching a verdict.

The American system of justice allows a jury to find a man either guilty or not guilty, he continued, with no provisions for a verdict of "innocent," and asked that although the jury could not find him innocent of the charges, that "you find me not guilty."

He closed, emotion still welling in his voice, quoting the poetry of Robert Browning:

"One more devil's triumph and sorrow for the angels;

"One wrong more to man, one more insult to God."

Earlier in his statement, Garrison said there had been five types of evidence brought against him by the government: Testimony from location owners who used pinball machines; testimony from pinball operators, who placed the machines in the locations; the testimony of former Capt. Soule; the government's "magic tapes," and the statements made by Gervais who was on the stand for most of two days last week.

"But step-by-step, the government's case faded away, not unlike the smile on the Cheshire cat in 'Alice in Wonderland,' where the cat faded away leaving nothing but the smile," said Garrison.

He said all of the location owners called by the prosecution testified they had never met nor bribed him, and of the pinball operators, he had met Boasberg (mistaking him for someone else until corrected), Elms, from whom he accepted a campaign contribution in 1969 and has not seen since, "and I also know Mr. Callery as a casual friend and I'm not ashamed of that."

On Soule, Garrison agreed that it was a "rather dramatic moment" when the former police captain produced in court a suitcase filled with \$63,000 in cash which he admitted having received as bribe payments over the past 10 years, but added it was not a moment that reflected any guilt on himself.

Terming Soule one of the government's "most important witnesses" in the case, Garrison noted that Soule had collected bribes and relayed information in furtherance of illegal pinball gambling, but testified in court he had never bribed Garrison; Garrison had never asked him to do anything improper and he considered the DA's office an effective one.

"There was nothing in his testimony to indicate he was paid to accomplish anything (illegal) in any way through my office," the DA stated.

Garrison said the fact that he had instituted a vice prosecution division in his office "is evidence in itself, not that I was helping the pinball industry, but in fact was discouraging it."

The towering DA said he found the thrust of the testimony from the government's own witnesses to be that there was effective law enforcement in regard to pinball payoffs in New Orleans, and they (the witnesses) knew it.

They testified, he added, they would not pay off persons they did not know for fear the pinball player might be a police officer and they would be arrested.

"This is not one of those wide open towns where you can flaunt the law—not since I've been district attorney," Garrison commented.

The DA recalled some operators had said from the witness stand that pinball payoffs had been going on in New Orleans for many years, since the 1940s "so they didn't just suddenly begin when Jim Garrison was elected to office."

"I did more to discourage the pinball operation in New Orleans than any other district attorney before me," he remarked.

The most important single point in the indictment against him, Garrison said, is the charge that he was paid "to permit these businesses to operate free of any substantial law enforcement interference. I think the evidence shows I did not permit these businesses to operate free of substantial law enforcement," adding if pinball owners had ever succeeded in bribing his office or fixing a case "you would know about it."

"You can bet your life on that."

It was then that Garrison indicated the federal government, without foreknowledge, actually initiated a conspiracy here, adding Gervais "is brilliant enough to put together a conspiracy where none existed."

On the government's tapes, it was Gervais who brought up Garrison's name to whomever he was talking, Garrison said, asking the jurors to "give serious thought to what came from the mouth of Pershing Gervais."

Noting Gervais operated for years from the Fontainebleau

Motor Hotel at Tulane and Carrollton Avenues, where most of the tapes were made, Garrison stated: "I don't remember the number of the hotel room he operated from, but I can bet the Gideon Bible had been gone for a long time." Anything Gervais touched resulted in his getting money, often in Garrison's name, the DA said.

Recalling Gervais had said 90 per cent of the pinball bribe money he collected from operators went to Garrison and he kept a 10 per cent commission for himself, Garrison asked the jurors, "Can you imagine Pershing Gervais giving anybody 90 per cent of anything? How would you like to hold your breath waiting for him to give you 90 per cent of something?"

Still ripping at Gervais' character and motives, Garrison pointed out his former friend has commented in court that he felt he was being "reborn" when aiding agents of the Internal Revenue Service to put their case together.

Garrison charged Gervais had not been reborn, "but must have been somewhere in the process of gestation" since he was still shaking down people for money even while working as a temporary agent of the government.

"Money stuck to this man like glue," said Garrison of Gervais.

The DA said Gervais, "whose only god is money," had steadfastly refused to cooperate with the IRS early in 1969 when the IRS was investigating his tax matters and asked him for his financial records.

However, "a marriage was made between Mr. Gervais and the government," Garrison asserted, because Gervais has not paid any of the \$8,000 he owes the government in back taxes, and the IRS has not asked him to begin making payments.

Using testimony given from the stand last week by attorney Guy Johnson, Garrison painted a picture of Gervais as a man who offered to commit perjury in favor of the highest bidder in this case. The DA asked the jurors if they could trust Gervais "as one of the crucial factors" in sending someone to the penitentiary.

Saying Gervais, now a pizza parlor owner in Brookhaven Miss., was involved in many enterprises at the Fontainebleau, Garrison said Gervais' occupation since leaving the DA's office in 1965, "if he ever had any, is still a mystery," adding it would be il-

logical to take any serious action as a result of Gervais' word in light of his past history of lying and illegal activity.

"This is a man who, when he wanted to call his dog, had to go to his neighbor to call his dog because he couldn't be believed," said Garrison of Gervais.

He said it was an insult to the intelligence of the jurors for the government to call Gervais as a witness whose testimony could cost a person his freedom.

"Who are the victims in this case after all," asked Garrison. "Who is the sheep and who is the wolf?"

Garrison then lashed out against the government's conduct in putting its case together, calling it "particularly curious."

The DA recalled that before moving his family to Canada immediately after Garrison and the others were arrested on June 30, 1971, Gervais had his name legally changed to Paul Mason and the U.S. Justice Department provided him with fake birth certificates for his two children so they could be registered in school in Vancouver.

The bogus certificates, produced last week in court, showed that his daughter had been born in Arizona and his son in Delaware, while Gervais had verified that in fact both children had been born in New Orleans.

Garrison asked the jury that if the Justice Department will forge birth certificates, "what is there it would not do if it desires strongly enough and the objective is interesting?"

Further, Garrison noted to the jurors that when Gervais had been relocated in Canada by the Justice Department in 1971 it was with the mutual understanding that he would not reenter the United States without the prior approval of the government or all pay he was receiving would be cancelled. Garrison asked the jurors how they would like to be a defendant in a case that had been made by a man working under those conditions.

Turning to the government's tape recordings, of which more than 50 were played during the trial, Garrison said he likes to call them "magic tapes, because there are so many things you can do with them."

He noted Lt. Ernest Nash of the Michigan State Police, who testified as the govern-

ment's voice and tape expert, had testified that he had never made a mistake in some 3,000 tape analyses.

However, Dr. Louis Gerstman, a New York professor of speech sciences, testified that on the one tape he studied (recorded Feb. 25, 1971, between Gervais and Garrison) he had found indications it had been "fraudulently fabricated."

Dr. Gerstman, accepted by the court as Garrison's voice expert, said he had found three instances of tampering in about the first one-fourth of the tape, and found no need to analyze it further.

Gerstman and Garrison were heavily criticized by the prosecution for having studied only one-fourth of one tape, while Lt. Nash had analyzed all of the government tapes.

Garrison likened Dr. Gerstman's action to a man taking his family for a trip on a four-engine plane, and noticing just before boarding that one engine is ready to fall off. He said you don't need to look any further to determine it is unsafe even if the other three engines appear okay.

Another strong point in the government's case has been that Gervais actually delivered bribe money to Garrison — three times to his home at 4600 Owens Blvd. and once to a room Garrison had at the Fontainebleau, all in 1971.

Garrison made reference to only one of the alleged bribe payments during his statement Tuesday — one purportedly made on June 29, 1971, the night before Garrison and the others were arrested.

The DA said the government has shown it had been concerned that the marked bills it had been giving Gervais to pass on to Garrison were not ending up in Garrison's hands. So on the night of June 29, Gervais showed up at Garrison's home, after calling and asking to come over, carrying an envelope containing \$1,000 in \$50 bills. The envelope and bills had previously been treated with an invisible luminous powder.

Gervais testified in court last week he had given Garrison the envelope but Garrison did not open it in his presence. The DA also pointed out there was virtually no discussion of the pinball industry on the tape recording made of their brief conversation that night.

"In a sense, money was finally pushed into my hands in the form of an envelope, but that form of an envelope, but that Garrison:

He said that the government agents who arrested him the following morning certainly found the money in the house after watching the residence all night "because money has the habit of not melting away during the night."

In attacking the use of the secretly-recorded tapes themselves, Garrison claimed the price paid for progress during the past decade has been high, and one of the highest "is the secret electronic tape recorder in the hands of the government."

"We all have one thing in common," he told the jury, "and that is being humans we're imperfect. It's been nearly 2,000 years since the last perfect man was on this earth."

Garrison explained he feels the great danger of being secretly recorded is not in discovery of the matter being sought by the government, but by things a person might say about others, often friends, "in a moment of irritation or foolishness."

Nearing the conclusion of his argument, Garrison said it was clear that the prosecution had not proved beyond a reasonable doubt that he or either of the other defendants in the case had participated in a conspiracy.

He said his office had its priorities, mainly crimes of violence such as murder and armed robbery, "but that does not mean we did not prosecute such victimless crimes as pinball payoffs."

"In regard to pinball cases, my office has been diligent, steadfast and consistent; with regard to Pershing Gervais, I consistently promised him and delivered nothing," the DA said.

Garrison had opened his statement with a passionate plea to the jury saying he had been facing the possibility of going to jail for the past two years, "and whether or not I go to the penitentiary is in your hands."

Judge Christenberry interrupted, telling the jury their decision was one of guilty or not guilty and not one of sentencing the defendants.

He had opened his statement with a brief quotation from the Declaration of Independence,

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adding America is a country which is based on the belief that it was created by God.

"Even a great democracy can fail to protect the rights of its citizens," he continued, "so the Bill of Rights was devised. But no matter how great a government is, it is possible for an individual to lose rights because of the very size and power of the government."

Garrison told the jurors there is no more responsible position in this nation, regardless of how lofty a job a person may hold, than to be a juror and pass judgment on whether a man remains free.

If they find the defendants guilty beyond a reasonable doubt, he added, they should do their part to uphold justice, but if not they should act as an insulator between the accused and the federal government by returning a not guilty verdict.

Speaking of himself and his fellow defendants, Garrison stated: "In addition to whatever sentence may be imposed, if a mistake in judgment is made by the jury we must bear the scars."

In his charge to the jury, which lasted slightly more than two hours, Judge Christenberry told its members to consider the case separately as to each of the three defendants, stressing that all 12 jurors must be in agreement of a verdict on each defendant.

He added that each defendant and the government is entitled to equal conscientious judgment by each juror.

The judge further pointed out the indictment document under which the three are charged is not evidence in itself, but is only the accusation of the government and the jury must consider only the offenses charged in rendering a verdict.

In other portions of his charge, Judge Christenberry said:

— The fact that some co-defendants pleaded guilty does not indicate that the defendants in the current trial also are guilty.

— The fact that it was the U.S. government that brought charges does not entitle it to

any more or less consideration than the defense.

— The jury, and not the court, determines how much weight should be given any certain piece of evidence.

— Just because a witness is testifying under oath doesn't mean he can't lie if he is willing to do so. Therefore, the testimony of each witness should be weighed on its own merits and the credibility of each witness is a matter for each juror to determine.

— The use of informants, such as Gervais, is standard practice and "often is a necessity to obtain information of secretly committed crimes and the identity of criminals."

— The Attorney General of the United States is authorized to look after the welfare of witnesses (such as in Gervais' case), which may include payment of money or providing a job.

— Failure of a defendant to take the stand in his own behalf should not infer the defendant is guilty. It is the responsibility of the prosecution to prove guilt beyond a reasonable doubt, and not the responsibility of the defense to prove innocence.

— Recordings often are used and are legal, proper and legitimate law enforcement procedures.

— If the jurors find that a conspiracy did exist, statements of a conspirator in furtherance of that conspiracy is binding on the other conspirators.

— Although 35 overt acts were charged in the government's indictment, only one overt act in furtherance of the alleged conspiracy must be proved to justify a conviction.

— Reasonable doubt is doubt founded on reason, for which a juror can give a reason based on evidence produced.

— It is not necessary in a conspiracy to prove all members thereof met together or put the conspiracy in writing, but rather that a mutual understanding was reached to violate the law, and one may enter into a conspiracy without having full knowledge of all the details of the conspiracy.

— Mere association with alleged conspirators is insufficient to convict a defendant. He must have participated wilfully and

knowingly in the conspiracy with the intention of furthering its objectives.

— The defendants must have purposely intended to violate the laws of the State of Louisiana to be found guilty, but need not have known they were in violation of a federal law as charged in the indictment.